

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JOSE PUPO-CARRERA,)	
)	
Petitioner,)	
)	CIVIL ACTION NO. 03-003 Erie
v.)	
)	JUDGE McLAUGHLIN
WARDEN JOHN J. LAMANNA;)	MAGISTRATE LENIHAN
U.S. IMMIGRATION AND)	
NATURALIZATION SERVICE)	
)	<i>(Electronic Filing)</i>
Respondents.)	

**MOTION FOR ENLARGEMENT OF TIME TO FILE SUPPLEMENTAL RESPONSE
AND FOR PERMISSION TO FILE SUPPLEMENTAL RESPONSE OUT OF TIME**

AND NOW, come Respondents Warden John J. LaManna and the U.S. Immigration and Naturalization Service (hereinafter referred to as "Respondents") by their attorneys,¹ Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania, and Christy Wiegand, Assistant United States Attorney for said district, and respectfully request that this Honorable Court enter an Order enlarging the time in which Respondents may file a Supplemental Response to the Petition filed in this matter, and permitting Respondents to file a Supplemental Response Out of Time, for the following reasons:

1. Petitioner filed a Petition for Habeas Corpus ("Petition") pursuant to 28 U.S.C. § 2241 on January 3, 2003.
2. At the time he filed the Petition, Petitioner, a Mariel Cuban, was in the custody of the Immigration and Naturalization Service ("INS"), and was being housed at the Federal Correctional Institution in McKean County, Pennsylvania ("FCI McKean").

¹ Neither this Motion, nor the limited representation by the United States Attorney's Office for purposes of this Motion, is intended to waive any defense which may be asserted on any respondent's behalf, including, but not limited to, insufficiency of process, insufficiency of service of process, or lack of jurisdiction over a respondent.

3. In his Petition, Petitioner alleged that he was being unlawfully detained by the INS. Specifically, Petitioner alleged that his continued detention violated 8 U.S.C. § 1231(a)(6) and his due process rights. As relief, Petitioner requested release or immediate return to Cuba.

4. On March 24, 2003, Respondents filed a Response to the Petition.

5. Following additional briefing, on July 14, 2004, Magistrate Lenihan issued a Report and Recommendation ("R&R") recommending that the Petition be denied.

6. The District Court adopted the R&R on September 17, 2004.

7. Petitioner appealed the District Court's decision to the United States Court of Appeals for the Third Circuit.

8. On May 5, 2005, the United States Court of Appeals for the Third Circuit vacated the District Court's Order denying the Petition and remanded the case to the District Court for further consideration in light of the United States Supreme Court's recent decision in Clark v. Martinez, 543 U.S. 371 (2005).

9. On January 9, 2006, Magistrate Lenihan issued an Order instructing Respondents to file a Supplemental Response on or before January 30, 2006.

10. Undersigned Counsel for Respondents did not receive Notice of the Court's January 9, 2006 Order until February 15, 2006. Accordingly, Respondents respectfully request permission to file their Supplemental Response out of time.

11. In order to definitively determine Petitioner's current detainment status and prepare a Supplemental Response, Counsel for Respondents must obtain documentation from Petitioner's alien file, which must be retrieved from the National Records Center. Accordingly, Respondents respectfully request that the Court grant them thirty (30) days, or until March 17, 2006, in which to file their Supplemental Response.

12. Counsel for Respondents has been advised that Petitioner is no longer in INS custody at FCI McKean. Counsel for Respondents has further been advised that Petitioner was released from custody on Order of Supervision on or about February 8, 2005. Accordingly, Petitioner will not be prejudiced by this request for enlargement of time.

CONCLUSION

WHEREFORE, for the foregoing reasons, Respondents respectfully request that this Honorable Court enter an Order enlarging the time for filing a Supplemental Response to the Petition for an additional thirty (30) days, or until March 17, 2006.

Respectfully submitted,

MARY BETH BUCHANAN
United States Attorney

s/ Christy Wiegand
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Counsel for the Respondent

CERTIFICATE OF SERVICE

I hereby certify that I have served this date a copy of the within *Motion for Enlargement of Time to File Supplemental Response and for Permission to File Supplemental Response Out of Time*, by mail or electronic filing, upon the following:

Jose Pupo-Carrera
90326-000
FCI McKean
P.O. Box 8000
Bradford, PA 16701

Petitioner

/s/ Christy Wiegand
CHRISTY WIEGAND
Assistant U.S. Attorney

Dated: February 16, 2006